S.B.CIVIL SECOND APPEAL NO.127/2005

Navin Bansal.
vs.
Sudarshana Kumari and others.

DATE OF JUDGMENT ::: 18.1.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. RR Nagori, for the appellant.

Mr. MC Bhoot, for the respondents.

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Heard learned counsel for the parties.

The appellant has filed this appeal challenging the judgments and decrees of the courts below on the ground that two courts below erred in decreeing the suit of the plaintiff despite the fact that the plaintiff did not appear in the witness box. It is also submitted that the landlord amended the plaint thrice and thereafter, included the need one after another for his sons and her husband. It is also submitted that two courts below committed serious error of law in holding that despite the change in plea taken by the landlord, there is need of the plaintiff for the suit shop. It is also submitted that though the area of shop is 10 ft x 45 ft but all the businesses for which the suit shop is sought by the plaintiff from the defendant, they cannot be run in one shop. This aspect was not

considered by the courts below.

I have considered the submissions of learned counsel for the appellant and perused the reasons given by the courts below.

It appears from the facts that the suit was filed in the year 1986 on the ground of personal bonafide necessity for plaintiff's son. The suit was amended after some time and need of the plaintiff's another son was also included and ultimately, by last amendment, the need of the plaintiff's husband was also added by the plaintiff and that was due to the marriage of the plaintiff's son and scarcity in the accommodation of the plaintiff's house resulting into shifting of godown from the house. Two courts below considered all the aspects of the matter and thereafter held that for the long period from 1986 to 2005, if there is change of need of the landlord, then that does not mean that the plaintiff cannot seek decree for eviction on account of subsequent need which accrued to the landlord during pendency of present suit.

So far as the presence of the plaintiff as witness is concerned, when there is other evidence available, then the suit cannot be dismissed on the ground that the plaintiff has not appeared in the witness box. In the present case, in facts of the case, the plaintiff's appearance in witness box would have been formal only.

In view of the above, no substantial question of law arises in this appeal, therefore, this appeal deserves to be dismissed.

At this stage, learned counsel for the appellant prayed that sufficient time may be granted to vacate the suit premises for which learned counsel for the respondents has serious objection. According to learned counsel for the respondents, the appellant has three more shops near the suit shop.

Be it as it may be, the appellant is running his business since long in the suit shop, therefore, looking to the totality of the facts, this Court deems that the appellant be granted sometime to vacate the suit shop.

Therefore, it is ordered that in case, the appellant furnishes a written undertaking before the trial court within a period of two months that he shall hand over the vacant possession to the landlord by or before 31.1.2007 and shall not part with the possession or sublet the suit premises during this period and shall pay all the arrears of rent and decreetal amount, if due, within a period of two months from today before the trial court or directly to the landlord, the decree under challenge shall not be executed till 1.2.2007. The appellant shall also deposit the rent month by month by 15th day of each succeeding month of his tenancy in the trial court.

In case of non-compliance of the order or default in

payment of rent mentioned above, the decree shall become executable forthwith.

With the aforesaid concession, this appeal is dismissed.

(PRAKASH TATIA), J.

S.Phophaliya